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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

October Term, 1941

No. 745

THE SCHENECTADY UNION PUBLISHING COMPANY

Petitioner

against

MARTIN L. SWEENEY

Motion of the American Jewish Committee, the B'nai B'rith, the Jewish Labor Committee and the American Jewish Congress for Leave to File Brief as *Amici Curiae*

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Supreme Court of the United States

October Term, 1941

No. 745

THE SCHENECTADY UNION PUBLISHING COMPANY,
Petitioner,

vs.

MARTIN L. SWEENEY.

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF *AMICI CURIAE*

May it please the Court:

The undersigned, as counsel for the American Jewish Committee, the B'nai Brith, the Jewish Labor Committee and the American Jewish Congress, respectfully moves this Honorable Court for leave to file in their behalf a brief *amici curiae* in this cause.

1. On December 22, 1941, this Court granted a writ of certiorari (..... U. S. ....., 86 L. Ed. 315) to review the decision of the Circuit Court of Appeals for the Second Circuit in the above entitled case (122 F. [2d] 288; R. 27).

2. In accordance with the provisions of Rule 27, subdivision 9, your petitioners have obtained the consent of the Schenectady Union Publishing Company, Petitioner herein, to the submission of a brief *amici curiae.* The consent of counsel for the respondent Sweeney has not been

sought inasmuch as he denied a prior request of your petitioners for his consent to their filing a brief *amici curiae* on the petition for a writ of certiorari in this case. His letter of refusal was read into the Congressional Record by the respondent (Congressional Record—Appendix, November 25, 1941, A5635). Under these circumstances, it appeared useless to make any further effort to obtain the consent of respondent to the filing of a brief *amici curiae* in respect of the hearing of the present writ.

3. On November 24, 1941, your petitioners moved this Court to submit a brief *amici curiae* with respect to the petition for certiorari which was then being sought. That motion was made shortly before the Court went into recess at a time when respondent had failed to indicate whether he would grant or withhold his consent. At the hearing of the motion, this Court stated that permission to file a brief *amici curiae* would be granted if the consent of the respondent were obtained. Subsequently, as indicated above, such consent was denied and therefore, no such brief could be filed.

4. Although consent of one of the parties to the litigation has not been obtained as provided in Rule 27, subd. 9, of the Rules of this Court, it is respectfully submitted that the present case affords appropriate occasion for the exercise of this Court's discretion and undoubted power to receive the brief *amici*.

5. The organizations seeking leave to file this brief are separate entities with nation-wide membership among American citizens of the Jewish faith. They were established, among other purposes, to foster and promote better relations among the various racial and religious groups in this country. For many years, they have been actively engaged in protecting minority rights, combating anti-Semitism and in upholding civil liberty. They are, therefore, vitally interested in the present litigation because of

its relation to and effect upon their efforts in these regards and because of its relationship to the maintenance of the fundamental freedoms guaranteed by the Constitution.

6. A divided court below held that charging a public official with anti-Semitism or suggesting that such official has been influenced in his acts by anti-Semitism, is libelous *per se*. Your petitioners are necessarily concerned with this ruling, the practical effect of which is that an utterance which identifies a public official with an unpopular view on a matter of public concern, or which suggests that such unpopular view has influenced action taken by him as a public official, involves presumptive and punitive liability. The grounds upon which the decision rests are equally applicable to any expression of views which are regarded with distaste by substantial elements of the population in respect of which public feelings at the moment run high. Such a decision effects a marked restriction upon the ambit of free discourse respecting the activities and opinions of public officials. In this aspect it raises a question going into the essence of the notion of free speech and freedom of the press in a democracy. It also has a peculiar significance in its relation to the expression of opinion by minority groups in the community. For it renders hazardous criticism by the members of such groups and by the press charging public officials with bias against minorities.

7. It is the considered view of the organizations proposing to submit the brief *amici* that this decision represents a novel and unprecedented extension of the frontiers of the law of libel which trenches upon fundamental constitutional liberties. While the parties to the litigation may be expected adequately to present the considerations affecting their individual interests, we believe that the issues involved are of such far-reaching importance that the views of organizations whose day-to-day activities

touch realistically upon these issues, and which have given years of study to them, may be of assistance to the Court.

Wherefore, it is respectfully urged that this Court grant leave to your petitioners to file a brief *amici curiae*, such brief to be filed not later that February 25, 1942 or such other time as the Court may deem proper.

HENRY H. NORDLINGER,
Counsel for the American Jewish Committee, the B'nai B'rith, the Jewish Labor Committee and the American Jewish Congress, amici curiae.

MILTON HANDLER,
Of Counsel.